IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 208 OF 1999

Gopal Laxman Kshemkalyani
since deceased through his
heirs Janardan G. Kshemkalyani
& Ors. ..Appellants

versus

Devi Shri Ahulyabai Holkar
Charitable Trust & Anr. ..Respondents

Mr. K. Y. Mandlik for the Appellants.
Mr. R. M. Hardas i/b. P. N. Joshi for Respondent No.1.
Mr. S. N. Gawade A.G.P. for the Respondent No.2 - State.

CORAM : D. G. DESHPANDE,J.

DATE : 17TH FEBRUARY,2005

ORAL ORDER :

1. Heard counsel for the Appellants, the Respondents Trust and the State.

2. It is the grievance of the appellants that when the Respondent filed an application claiming certain property as property of their trust, there

was delay of about 30 years because the suit property was declared to be property of the appellants. The Appellants took strong objection to this delay but by two lines order the delay was condoned by the Joint Charity Commissioner by his order dated 6.3.1990. The order is as under :

> "Read the application. Reasons given for delay in filing the Revision appears to be true. Hence delay condoned as prayed."

2. Being aggrieved by this order, the present appellants filed another application under Section 72 of the Bombay Publc Trust Act 1950 before the IV Additional District Judge, Nasik. After hearing the parties, the court came to the conclusion that since the matter is remanded for fresh enquiry no prejudice will be caused to any side and both the sides will have full opportunity to prove their respective contentions and therefore the court held that the impugned order of condoning the delay was justified.

3. It is against this order dated 7.8.1998, that the present appeal is filed.

4. Since delay is condoned by the First Court

and the same view is expressed by the 4th Additional District Judge, Nashik considering the practical aspect of the matter i.e. both the parties have been given full opportunity to prove their respective contentions regarding the ownership of the property and their right, title and interest in the property. No interference is called for in the impugned order.

5. In the result, I pass the following order :

ORDER

Appeal is dismissed. No order as to costs.

. The above observations will not come in the way of any of the parties in proving their respective contentions. Stay stands vacated.

17.02.2005 (D. G. DESHPANDE, J.)